



## Disclosure

On July 31, 2007, Appellee filed a motion asking for information concerning whether the Secretary of Defense approved the Court's Rules of Practice for Military Commissions.

On August 2, 2007, the Court replied, "The Defense Motion for Additional Disclosure concerning whether the Secretary of Defense has approved or ratified this Court's Rules of Practice is **GRANTED AS FOLLOWS:** As of 1 August 2007, the Secretary of Defense and/or the Deputy Secretary of Defense have not approved or ratified the Court's Rules of Practice."

None of the Judge's asked me to check on the status of the Rules' approval. However, I decided to do so on my own initiative, and on August 13, 2007, I called Mr. Paul Ney, Deputy General Counsel (Legal Counsel), Office of the General Counsel, Department of Defense, and asked him whether the Secretary of Defense had approved the Rules of Practice for Military Commissions. Mr. Ney replied that the Deputy Secretary of Defense had approved the rules, and forwarded to me the approval document (Encl). He forwarded an e-mail that was previously sent to me on August 10, 2007; however, I did not receive it until it was re-sent on August 13, 2007. The August 10, 2007, e-mail stated, "The Rules have been approved. See attached. Call me if you have any questions." I did not have any questions for Mr. Ney about the approval document. About 30 minutes later, I sent the approval document to the parties. About 10 minutes after sending them to the parties, I forwarded the e-mail that I sent to the parties to the Judges.

I did not send Mr. Ney's e-mail to the Judges. One of the functions of a Clerk of Court is to screen communications, and that is why I did not forward Mr. Ney's communication to the Judges.

One of the motions before the Court pertains to whether Mr. Foreman and I are sworn. Both Mr. Foreman and I are retired military officers and as such took an oath upon commissioning and remain subject to the Uniform Code of Military Justice under 10 USC § 802. After retiring from active duty and well before January 2007, we began civilian federal employment with the Department of Defense. When Mr. Foreman and I began our federal civilian employment, we took the following oath of office:

### Oath of Office for Civilian Federal Employees

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

//Signed//

Mark Harvey  
Deputy Clerk, USCMCR

August 21, 2007  
DATE

## Harvey, Mark Mr DoD OGC


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**From:** Ney, Paul, Mr, DoD OGC  
**Sent:** Monday, August 13, 2007 2:27 PM  
**To:** Harvey, Mark Mr DoD OGC; Foreman, Leroy Mr DoD OGC  
**Subject:** FW: CMCR Rules

**Attachments:** CMCR Rules of Practice.pdf

### Paul Ney

Deputy General Counsel (Legal Counsel)  
Office of the General Counsel  
Department of Defense  
1600 Defense Pentagon, Room 3B688  
Washington, DC 20301-1600



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**From:** Ney, Paul, Mr, DoD OGC  
**Sent:** Friday, August 10, 2007 5:00 PM  
**To:** Foreman, Leroy Mr DoD OGC; Harvey, Mark Mr DoD OGC  
**Subject:** CMCR Rules

The Rules have been approved. See attached. Call me if you have any questions.

Paul



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### Paul Ney

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